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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

CARLTON S. DARGUSCH, *Petitioner,*

v.

COLUMBUS BAR ASSOCIATION, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

REPLY MEMORANDUM FOR PETITIONER

Of Counsel:

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REPLY MEMORANDUM FOR PETITIONER

The Brief in Opposition augments rather than justifies the deviation in this case from constitutional norms of fair procedure in disbarment proceedings. It is bad enough that Respondent failed in the court below to offer any explanation or justification for its refusal to disclose the identity of the informant whose accusation initiated these disbarment investigations and proceedings. But in this Court that refusal is compounded by Respondent's statement that "There was no 'accuser' of Mr. Dargusch to the Columbus Bar Association" (Opposition, p. 8) and by Respondent's suggestion that the proceeding resulting in the suspension of an attorney after forty years of practice was born in an idle and spontaneous conjecture

by Chairman Schwer of the Ohio Board of Commissioners on Grievances and Discipline.[1]

(i) With remarkable lack of candor, Respondent continues to withhold the identity of Petitioner's informant-accuser. Respondent repeats its earlier assertion that Chairman Schwer of the state's Board of Commissioners on Grievances and Discipline, an attorney in Springfield, Ohio, had transmitted the accusation against Mr. Dargusch to the Columbus Bar Association. But certainly Mr. Schwer, who was unacquainted with Petitioner, did not wake up one morning from a dream in which he was counseled to accuse a Columbus attorney of misconduct. Breach of ethics accusations do not emerge spontaneously in the minds of state officials, and it is the informant who made the accusations *to* Chairman Schwer whose identity Respondent still insists on suppressing.

(ii) The sole response to the grounds urged for this Court's review is that "There was no 'accuser' of Mr. Dargusch" because "his accuser was the Columbus Bar Association . . ." (Opposition, p. 8). But the issue of confrontation uniformly arises in criminal or disciplinary proceedings wherein a public agency is the nominal accuser. In the numerous confrontation cases recently before this Court (see Petition, p. 16), there were involved public

[1] Respondent concedes (Opposition, p. 7) that the constitutional issue of confrontation was duly placed by Petitioner before the Supreme Court of Ohio prior to its disciplinary action. That the question had not previously been briefed before the Board of Commissioners is of no consequence. At Petitioner's hearing before the Board he had expressly demanded confrontation (see Petition, p. 12). And the Board was in any event not competent to rule on the constitutional challenge to its failure to require confrontation; in Ohio a constitutional challenge "is a question for the courts and not for a board or commission" (*East Ohio Gas Co.* v. *Public Utilities Commission,* 137 Ohio St. 225; 28 N.E. 2d 599) and an administrative body is "without jurisdiction to consider and determine a question of constitutional validity" (*S.S. Kresge Co.* v. *Bowers,* 170 Ohio St. 405; 166 N.E. 2d 139).

accusing agencies. Thus the question is not whether the accused knows the identity of the charging and prosecuting agency—it is whether *that* agency may suppress the identity of the individual accuser.

(iii) As emphasized in the Petition (pp. 15, 18), the hearing resulting in Petitioner's disbarment departed in numerous respects from established norms of fair notice and procedure, compounding the arbitrary and unjustified suppression of the identity of the informant-accuser. To the compelling grounds thus presented for this Court's review, there is now added Respondent's effort to mislead this Court by the suggestion that an honored member of the profession has been put to inquisition and trial on an idle conjecture by the Chairman of the Board of Commissioners on Grievances and Discipline, without anyone having accused him in the first instance of misconduct. This improbable suggestion, tendered at the eleventh hour in attempted justification of the refusal to afford confrontation in the state proceedings, merely adds to the necessity for orderly disclosure, consistent with due process, of the identity of Petitioner's informant-accuser. What is at stake now in addition to the integrity of the disbarment proceedings is the integrity of the judicial process.

Respectfully submitted,

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